

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY,
245 Murray Lane SW
Washington, DC 20528

Defendant.

Case No. 19-cv-2395

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Homeland Security under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have constructively exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining

the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Homeland Security (DHS) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DHS has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7. In January 2019, American Oversight submitted two FOIA requests to DHS regarding records of a single, high-level agency employee.

Calendar Request

8. On January 17, 2019, American Oversight submitted a FOIA request to DHS seeking the following:

All calendars or calendar entries for Katharine Gorka, including any calendars maintained on her behalf (e.g., by an administrative assistant), from January 21, 2017, through the date the search is conducted.

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how Ms. Gorka allocates her time on agency business.

9. American Oversight has not received an acknowledgement or any other communication from DHS regarding the Calendar Request.

External Communications Request

10. On January 17, 2019, American Oversight submitted a FOIA request to DHS seeking the following:

All email communications (including emails, email attachments, and calendar invitations) between Katharine Gorka and any of the following groups or individuals representing the following groups:

- i. Council on Global Security
- ii. Threat Knowledge Group, or anyone with an address ending in @threatknowledge.org
- iii. Westminster Institute, or anyone with an address ending in @westminster-institute.org
- iv. Foundation for Defense of Democracies, or anyone with an address ending in @fdd.org
- v. Family Research Council (FRC), Jerry Boykin, Tony Perkins, or anyone with an email address ending in @frc.org
- vi. Federation for American Immigration Reform (FAIR), Daniel Stein, or anyone with an email address ending in @fairus.org
- vii. Center for Immigration Studies (CIS), Mark Krikorian, Jessica Vaughan, Jason Richwine, or anyone with an email address ending in @cis.org
- viii. NumbersUSA, Roy Beck, Rosemary Jenks, or anyone with an email address ending in @numbersusa.com or @numbersusa.org
- ix. Center for Security Policy (CSP), Frank Gaffney, Fred Fleitz, Clare Lopez, Phil Haney, or anyone with an email address ending in @centerforsecuritypolicy.org or @securefreedom.org
- x. The Remembrance Project, Maria Espinoza, or anyone with an email address ending in @theremembranceproject.org
- xi. Immigration Reform Law Institute (IRLI), Dale Wilcox, or anyone with an email address ending in @irli.org

- xii. VDARE Foundation, Peter Brimelow, or anyone with an email address ending in @vdare.com
- xiii. ACT for America, Brigitte Gabriel, or anyone with an email address ending in @actforamerica.org
- xiv. Thomas More Law Center, Richard Thompson, or anyone with an email address ending in @thomasmore.org
- xv. The Heritage Foundation, Kay Cole James, Hans von Spakovsky, Mike Gonzalez, Steven Groves, Charles Stimson, or anyone with an email address ending in @heritage.org
- xvi. Breitbart News, or anyone with an email address ending in @breitbart.com
- xvii. Integrity Initiative, or anyone with an email address ending in @integrityinitiative.net
- xviii. Gatestone Institute, or anyone with an email address ending in @gatestoneinstitute.org
- xix. Secure America Now, or anyone with an email address ending in @secureamericanow.org
- xx. Pamela Geller, or anyone with an email address ending in @gellerreport.com
- xxi. Jihad Watch, Robert Spencer, or anyone with an email address ending in @jihadwatch.org
- xxii. The David Horowitz Freedom Center, FrontPage Magazine, David Horowitz, or anyone with an email address ending in @davidhorowitzfreedomcenter.org or @frontpagemag.com
- xxiii. Understanding the Threat, John Guandolo, or anyone with an email address ending in @understandingthethreat.com

Please provide all responsive records from January 21, 2017, through the date the search is conducted.

11. On January 29, 2019, DHS acknowledged the External Communications Request and assigned the request tracking number 2019-HQFO-00288.

12. American Oversight has not received any further communication from DHS regarding the External Communications Request.

Exhaustion of Administrative Remedies

13. As of the date of this Complaint, Defendant has failed to (a) notify American Oversight of a final determination regarding American Oversight's FOIA requests, including the scope of responsive records Defendant intends to produce or withhold and the reasons for any

withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

14. Through Defendant's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

15. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

16. American Oversight properly requested records within the possession, custody, and control of Defendant.

17. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

18. Defendant has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

19. Defendant's failure to conduct adequate searches for responsive records violates FOIA.

20. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Records

21. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

22. American Oversight properly requested records within the possession, custody, and control of Defendant.

23. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

24. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

25. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

26. Defendant's failure to provide all non-exempt responsive records violates FOIA.

27. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;

- (2) Order Defendant to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and an index justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: August 8, 2019

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso

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Katherine M. Anthony

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